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ABOUT CORRELATION OF ADMINISTRATIVE PROCESS, ADMINISTRATIVE COURT PROCEDURE AND PROCEEDINGS ON CASES OF ADMINISTRATIVE OFFENCES

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Debating points of doctrinal interpretation of the essence of such concepts as "administrative process", "administrative court procedure", "proceedings on cases of administrative offences", "management process" are analyzed in the article. The author provides his own position on the issue of their role in ensuring the rule of law and the quality of public administration, security and protection of the rights and legitimate interests of citizens and legal persons.

Keywords: administrative justice, administrative process, managerial process, administrative procedures, extrajudicial conciliation.

It is no exaggeration to say that the issues about the place and role of administrative justice in the mechanism of the modern Russian State, about the correlation of administrative process, administrative court procedure and proceedings on cases of administrative offences in recent years have actually become a "trademark" of our administrative-legal sciences. However, the reasons for this are rooted not in the successful resolution of these issues on theoretical or practical level.

For the most of Western Europe states, the United States, Australia and New Zealand administrative justice is a really valid institute, is a system of various institutions (administrative courts, administrative tribunals, various agencies) that quite effectively monitor the legality of the activity of public administration, protect the rights of citizens, individuals and legal entities from its wrongful actions or administrative errors [3, 47-98; 10; 15; 16, 137-162; 18]. For Russia (pre-revolutionary, Soviet and post-Soviet), administrative justice is predominantly an sphere of multi-year academic discussions, which still have not been completed by the formation of a doctrine universally accepted by scientific community or the creation of corresponding institutions and legislative framework for their operation. In this connection, we should like to draw attention to the following.

The First. Today, the range of opinions on the content of the concepts of "administrative justice", "administrative court procedure", on the procedural forms for consideration of cases arising from administrative and other public relations continues to be extremely broad.

Y. M. Starilov believes that administrative justice, when fulfilling a vital function of judicial control through the use of appropriate procedural forms in the system of administrative court procedure, must be allocated in a separate branch of court procedure (Justice) dealing with legal disputes arising in the sphere of administration (management), and aiming at ensuring the subjective public rights and freedoms of natural and legal persons [13, 212-213]. At that, he believes that only the process of consideration of administrative-legal disputes is an administrative process. With these or those nuances judicial activity is linked by A. A. Demin with the right to be called administrative process.

A large group of scientists, including D. N. Bakhrakh, A. P. Shergin, M. S. Studenikina, A. S. Dugenets, A. B. Zelentsov, write about the two independent forms of administrative court procedure: *administrative-litigious jurisdiction* (administrative justice) and *administrative-tort jurisdiction* [5; 7, 68-79; 17, 752-761].

Position of Yu. N. Starilov and his supporters draws attention, first of all, by its "academic purity" in terms of understanding of procedural form, secondly, continuity with the Russian legal tradition of understanding of administrative justice. For example, A. I. Yelistratov already at the beginning of the last century said that mixing of consideration of disputes concerning a right and bringing to administrative responsibility was a "misunderstanding" [6, 24]. We find alarming the fact that the status of proceedings on cases of administrative offences, which in addition are not considered as procedural activity, is not uniquely defined.

Position of the opponents of Yu. M. Starilov attracts with its pragmatism, I would say – of a real life. First, it does not destroy the enough established vision of a "layered nature" of administrative process, as which we regard both the resolution of a dispute concerning a right and exercising of administrative responsibility. Second, it takes into account the fact that today we can hardly concentrate proceedings on cases of administrative offences only in courts, since removal of executive authorities and their officials from participation in the exercising of administrative responsibility actually paralyzes the entire system combating administrative delinquency. We find alarming the "double standards" in positioning proceedings on cases of administrative offences: if cases are considered by subjects of state executive power – this is a part of administrative and jurisdictional process, if the court – this is an administrative court procedure [2, 70].

Considering the quality of the contemporary public administration that at all desire cannot be recognized satisfactory, given rather ghostly abilities of ordinary citizens to confront "administrative fib", today it is important not to advocate a particular doctrinal position, but to converge these positions in order to obtain specific practical results that improve the quality of life of the Russians.

It seems that a certain compromise on the path of liberation from the "diversity" of modern interpretations of the concepts of "administrative process", "administrative justice", "administrative court procedure" lies in their understanding through the category "form" – processual or procedural one.

We would take off a lot of contentious issues, if *the processual* form we recognized only as a judicial order of consideration of cases, having received as a scientific "preference" an ability to see in the judicial order of resolution of cases, arising out of administrative and other public relations, *legal origins that inherent of exactly processual activity: principles of Justice, fundamental ideas of court procedure activity enshrined in the Russian Constitution.*

We would take off a lot of issues, if the proceedings on cases of administrative offences as part of administrative jurisdiction we considered as a *procedure-processual form* of exercising administrative responsibility by public authorities (their officials) and courts, and if we stopped to consider, as suggested by P. I. Kononov, the activity of courts of general jurisdiction to review such cases as administrative, managerial one [9, 662].

The Second. With all the positive, what is entailed by administrative court procedure for the protection of subjective public rights and freedoms of natural and legal persons, its role in providing *"useful, high-quality, effective, good governance"* [5, 14] should not be absolutized.

Administrative court procedure, as this follows from article 1 of the project of the Constitutional Court of Arbitration of the RF, is connected with judicial *protection of rights that have been violated or disputed rights*. How many cases should be considered in the context of our infantile bureaucracy to influence on the formation of *good governance, the reduction in the number of violations of citizens' rights and freedoms*? And where is the confidence in the fact that administrative court procedure as a processual form of consideration of disputes concerning a right can affect the activity of public administration in such scale that the public administration, without its deep internal modernization, becomes high-quality and effective?

Such doubts are not groundless. On the one hand, the practice of the Russian public administration is associated with a huge number of corruption offences, the direct or side effect of which is improper actions or inactions of public servants and officials in many areas of economic and social life, administrative rule-making which is contrary to the laws. On the other hand, and this is recognized even by the most zealous supporters of the establishment of administrative courts, the project of the Constitutional Court of Arbitration of the RF do not define the crucial categories relating to public administration and its results, which should be the subject of judicial appeal (administrative legal act, normative legal act, administrative procedures). In these circumstances, especially in the absence of legislative regulation of the general principles of administrative procedures, administrative court procedure may turn into a farce, in the form of protection of not citizens, but officials.

This means that in the process of forming *judicial mechanisms for the protection of the rights and lawful interests* of citizens and legal entities from bureaucratic arbitrariness we should more actively and consistently create conditions that exclude or minimize the risk of decisions or actions (inactions) of bodies and officials of public administration, which violate the rights, freedoms and lawful interests of the participants to administrative-legal relations. These conditions I associate with the improvement of the *procedural forms* of public administration and the achievement of a compromise in part of understanding of administrative process.

As is known, in administrative-legal science processual form and administrative process for quite a long time were associated not only with the procedural activities of the bodies of Justice, but also with the activity of any of state bodies, if it evolved from a legally regulated totality of similar procedures aimed to achieve a certain substantive-legal outcome. This understanding of the processual form of activity of public administration, developed in the works of V. M. Gorshenev,

G. I. Petrov, V. D. Sorokin, for its time, was certainly of a progressive nature, because it was oriented on the processualization of public administration, consequently, reducing the risk of voluntarism and arbitrariness of administration.

Therefore, while not denying the original ideas of the managerial concept of administrative process, we believe that it should be developed exactly as a *managerial one* related to legally significant procedures of *positive proceedings*. We would take off many issues if in positive proceedings we stopped looking for administrative process, and focused our attention on their managerial nature enclosed in administrative procedure (procedures) as "technological" norms determining conditions, order, time terms and sequence of actions of an executive authority body to exercise its competence, implementation of laws and administrative acts [11, 5-41].

The Third. With all the differences of interpretations of the concepts of "administrative justice", "administrative jurisdiction", "administrative court procedure (Justice)", they are positioned primarily as a state-authoritative activity to settle administrative-legal conflicts [8, 652]. At that, A. B. Zelentsov, one of the few legal scholars, focuses on the need to develop alternative (non-jurisdictional) ways to resolve administrative disputes [8, 321].

Today, the range of application such measures is very narrow. Mediation procedures at the legislative level are provided for only for the settlement of disputes arising out of civil legal relations, including with regard to the implementation of entrepreneurial and other economic activity, as well as disputes arising out of employment and family legal relations [1]. Settlement agreements on disputes involving public-law interests did not receive wide acceptance, and even here they are considered only in the context of relations regulated by the CPC RF and APC RF. Neither mediation nor settlement agreements are applied to disputes concerning passing of public service, giving rise to numerous lawsuits on the restoration at service or remission of penalties.

With all the complexities of application non-jurisdictional methods of dispute settlement in the sphere of public administration, it should be kept in mind that recommendation No. Rec (2001) 9 of the Committee of Ministers of the Council of Europe to member states "On alternatives to trial of disputes between administrative authorities and private parties" directly orients on a widespread introduction of alternative means of resolving administrative disputes that "might promote convergence of administrative authorities with population" [19].

The Fourth. In our view, all four forms – the processual one is within the framework of administrative-justice relations; the procedural-processual one is

within the framework of administrative-tort relations; procedural one is within the framework of managerial process and positive proceedings; procedural-conciliated one is within the framework of alternative (non-jurisdictional) dispute resolution options – in addition to purely legal, have a great social significance. Logical sequence of formation the social significance of these forms we see as follows:

– *procedural form of positive proceedings* creates a normative framework of appropriate intra-apparatus, and in certain cases and external authoritative implementation of public administration, minimizes risks of delegitimization of public administration because of mismanagement, violation of the rule of law, disregard for the rights and legitimate interests of individuals and legal entities;

– *administrative justice* creates a procedural framework, as the Russian pre-revolutionary legal scholars wrote about administrative justice, "patterns of management", "prevention and suppression of administrative fib» [12, 283], forming a complete mechanism of protection of society and the State against unlawful legal acts, decisions and actions of public authorities, officials, public and municipal servants;

– proceedings on cases of administrative offences establishes an organizational and legal framework for forming *procedural-processual mode* of implementation administrative responsibility as a set of processual principles, means and methods of their achievement, processual safeguards for the rights and legitimate interests of participants to proceedings;

– *alternative (non-jurisdictional)* options for resolving disputes without an authoritative content provide the parties an opportunity, on an equal footing, to take the initiative to resolve controversies, coming to a compromise or consensus.

Thus, the different processual (procedural) forms to ensure balance of private and public interests are real administrative-legal instruments aimed at the formation of the rule of law and the quality of public administration, protection and defense of the rights and legitimate interests of citizens and legal persons, and through this at the search for social consonance between public authorities and the population.

Among these forms the special role of administrative court procedure is connected with its ability, on the background of factual inequality of authoritative and powerless subjects of administrative-legal relations, to ensure their *processual equality*, including through equal rights on the collection, presentation and examination of evidence, on the participation in the process of consideration of dispute by court, on the appeal to court of any processual decisions of the other party that, one

way or another, affect the rights and legitimate interests, as well as the equal opportunities to use legal means of processual attack and defense.

Equally important that the procedures of pleadings always reflect the bond of justice with spiritual, socio-cultural, political-legal experience in a particular society. Therefore, "in different institutional forms and types of jurisdiction (criminal, civil, administrative) a judicial ritual, which is included in the process of internalisation and exteriorization of institutes of judicial power and the process of resolving the various types of legal conflicts, is a significant element of its political-legal and socio-cultural legitimization" [4, 14].

All this, in addition to the presumed for administrative court procedure effective protection of society and the State from improper public administration, serves as a powerful instrument of forming confidence in administrative justice and judicial decisions on specific cases, facilitating the search for *consensus* in society as a state of the consonance concerning the quality of public administration, protection of subjective public rights and freedoms of natural and legal persons.

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